

REMARKS/ARGUMENT

Claims 1-33 are pending. Claims 1, 10, 16, 17, 18, 19, 26 and 30 are independent.

Applicants initially wish to thank Examiner Wasylchak and his primary Examiner Jagdish Patel for the cordial and productive interview at the U.S. Patent and Trademark Office on February 10, 2005. The arguments presented, and agreements reached, are set forth below with reference to the interview.

In the Office Action, the Examiner expressed an objection to the phrase “substantially the same price” in the claims. In particular, the position was taken that “substantially” is indefinite or vague. At the interview, the undersigned pointed out that a search of the Patent and Trademark Office patent database turned up 51,170 patents that included claims using the phrase “substantially the same” that have issued since 1976. It is believed clear that this phrase is not indefinite and, based on the search result, an abridged copy of which is submitted herewith, has not been considered so by the Patent and Trademark Office. In view of the above, it is requested that the objection be withdrawn.

In the Office Action, all of the claims were once again rejected under 35 U.S.C. 103 over Togher et al. in view of official notice. The Examiner’s rejection on these grounds is respectfully traversed.

Togher et al. is a system that performs anonymous trading. In an anonymous trading system, matching and trade execution are done anonymously. That is, trades are matched and executed without the trader having knowledge of who the trader’s counterparty is. Because a trader may not wish to trade with every potential counterparty, in Togher’s system, the trader is protected by the system filtering out the orders presented to the trader such that the trader only sees orders for which there is sufficient bilateral credit. The trader only sees at his workstation orders that are dealable, i.e., orders for which bilateral credit exists.

By their nature, in systems such as Togher's all trades are matched and executed without the party to a trade knowing a counterparty's identity.

With regard to independent claim 1, it has been conceded that Togher et al. does not teach an anonymous trading system that includes either: (a) a means for offering to the identified counterparty a further trade at the same price as the executed deal; or (b) a means for executing a further trade that is irrespective of whether or not the further trade exceeds one or both of the credit limits assigned by each of the parties to the trade to the other in place when said executed deal took place. The Office Action relied upon official notice that each of these features is old and well known in the art.

As a general matter, the pending rejections of all of the claims are based in part on Official Notice, supported by two dictionary definitions of cross-trading. As was pointed out at the interview, Applicants do not believe that the present claims should be rejected absent citation of actual prior art that shows all the features of the claims, in particular those not present in Togher et al.

As was pointed out by the undersigned at the interview, at best, Official Notice could conceivably be taken of an individual broker telephoning a customer and offering a further trade in a telephone conversation. However, this situation would not meet the features of the independent claims that have been discussed in detail in the previous responses. In further support of the Official Notice, the Examiner has been relying upon dictionary definitions of crossed trades, also known as cross orders.

In particular, a crossed trade/order is defined in one of the cited dictionaries as a practice in which buy and sell orders are offset without recording the trade on an exchange. One dictionary definition defines a "cross purchase" as "when a broker improperly executes a cross order directly without going through the stock exchange." First, even taking this into consideration with the Official Notice, the combination would not meet the recited feature of

the anonymous trading system itself offering a further trade. In fact, all of the definitions relate to trades that are: (a) *outside* the system in question; and (b) *improperly so*.

That is, even if it were deemed, for the purposes of argument, that further trades are known *in the abstract* (and Applicants make no such admission), that is not enough to support a rejection of claim 1. Claim 1 recites that *the system itself* provides means for offering and means for executing the further trade *in the anonymous trading system*. On the other hand, in the dictionary definitions, the sales take place *outside of the system* (i.e., outside of the exchange). Thus, even when combined, the Official Notice, Togher and the dictionary definitions do not meet the features of the claims, and no prima facie case has been set forth for at least that reason.

Moreover, as was pointed out in the interview, the cited prior art dictionary definitions *teach away* from the *exchange* providing the opportunity for the further trade, since such trades are frowned upon by the exchanges, and would therefore teach away from the anonymous trading system providing such trades. In each dictionary definition relied upon, the type of trade defined, whether it be a crossed trade, cross order or cross purchase, is described as being improper, manipulative, or simply not permitted. In view of these teachings away, there would have been no motivation to use any of these definitions in combination with Togher when deciding how to design a trading system.

Further, anonymous trading systems are designed to keep the identities of trading partners anonymous. For this additional reason, the anonymous nature of the Togher et al. system would have *dissuaded* one of ordinary skill in the art from *redesigning the system* so as to provide the recited further trade by the means for identifying, the means for offering, and the means for executing, since execution and matching are always done anonymously in an anonymous trading system.

As was pointed out in the previous responses, in claim 1, the anonymous trading system *encourages* the further non-anonymous trade, which is contrary to Togher, since the trade is not anonymous, and contrary to the dictionary definitions of crossed trade/order/purchase, which each occur *outside the system*, and which are frowned upon in any event.

For at least the foregoing reasons, *all of the art* cited in the Office Action teaches away from the recitations of claim 1, and in any event, fails to meet the features of the claim. For at least this additional reason, claim 1 is believed patentable over the art identified in the Office Action.

At the interview, Primary Examiner Patel agreed that the rejections should not be based upon Official Notice and the dictionary definitions and agreed that further Office Actions would cite actual prior art references in any rejection. It is requested that any proposed combination that may utilize Togher et al. take into account the definition of an anonymous trading system.

Among the limitations of independent claim 10, which are neither disclosed nor suggested in the art of record are:

“the deal execution means further identifying the counterparties to each other on completion of the deal; and

means for permitting a party to an executed deal to provide a non-anonymous offer or request for a further deal with the for a counterparty to the executed deal at the same price, the means for permitting including means for adjusting the counterparties credit limits with one another by an amount equal to the value of the deal.”

The rejection of claim 10 is believed to be defective for reasons similar to those discussed above, and discussed at the interview. It is therefore requested that the rejection be withdrawn.

Among the limitations of claim 16, which are neither disclosed nor suggested in Togher et al. are:

“the broker terminal further effectuates a first order between a first and second trader, notifies the first and second trader of the respective identities of their counterparties, and, thereafter, when requested by at least one of the first and second traders, the broker terminal effectuates a second order between the first and second traders at substantially the same price as the first order regardless of the credit limits between the first and second traders.”

Independent claim 16 is believed patentable for reasons substantially similar to those discussed above in connection with claims 1 and 10.

Independent claims 17, 18, 26 and 30, as well as the claims dependent thereon, are believed patentable for reasons substantially similar to those delineated above in connection with independent claims 1, 10 and 16.

Among the limitations of claim 19, which are neither disclosed nor suggested in the art of record, are:

“performing a second trade between the first and second trader through the anonymous trading system without regard to the trading limits.”

Togher et al. performs a single trade, not two separate trades, and certainly does not disclose or suggest the desirability of first carrying out a first trade based on trading limits and then performing a second trade without regard to the trading limits. In fact, a main feature of the Togher et al. system is to only allow trades within the preset bilateral credit limits. Moreover, the dictionary definitions of crossed trades/orders/purchases teach away from a system that allows such trades, for the reasons discussed above.

For at least the above, reasons, claim 19 is believed allowable.

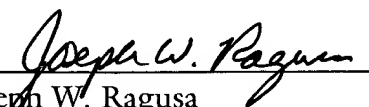
Although the issue of the propriety of the official notice is essentially moot in view of the discussion above and the agreement made at the interview, Applicants maintain, for the reasons presented in prior responses, the position that the use of official notice is improper as it relates to the state of the art. Whether something is known in the art is *not* the type of thing that may be officially noticed. Moreover, the case (*In re Eynde*) relied upon is cited in the MPEP for the very purpose of defining the legal limitations upon the use of Official Notice. It is clearly intended to state a generally applicable principle of law, not limited to its facts, which are not described in the MPEP citation in any event.

The other claims in this application are each dependent from one or another of the independent claims discussed above and are therefore believed patentable for the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

In view of the arguments presented above, in previous papers, and at the February 10, 2005 interview, reconsideration and allowance of the application are respectfully requested.

Dated: March 10, 2005

Respectfully submitted,

By 
Joseph W. Ragusa
Registration No.: 38,586
DICKSTEIN SHAPIRO MORIN &
OSHINSKY LLP
1177 Avenue of the Americas
41st Floor
New York, New York 10036-2714
(212) 835-1400
Attorneys for Applicant



USPTO PATENT FULL-TEXT AND IMAGE DATABASE

[Home](#)[Quick](#)[Advanced](#)[Pat Num](#)[Help](#)

[Next List](#)[Bottom](#)[View Cart](#)

Searching 1976 to present...

Results of Search in 1976 to present db for:
ACLM/"substantially the same": 51170 patents.
Hits 1 through 50 out of 51170

[Next 50 Hits](#)

[Jump To:](#)

[Refine Search](#) ACLM/"substantially the same"

PAT. NO.	Title
1 6,845,469	Method for managing an uncorrectable, unrecoverable data error (UE) as the UE passes through a plurality of devices in a central electronics complex
2 6,845,360	Encoding multiple messages in audio data and detecting same
3 6,845,265	Systems and methods for locating a tooth's apical foramen
4 6,845,118	Encapsulated optoelectronic devices with controlled properties
5 6,845,049	Semiconductor memory device including a delaying circuit capable of generating a delayed signal with a substantially constant delay time
6 6,844,949	Method and apparatus for storing and retrieving digital page data
7 6,844,946	Tunable holographic filter

8 6,844,914 Image recording device
9 6,844,844 System comprising a satellite with radiofrequency antenna
10 6,844,821 Electronic display system tag, related interface protocol and display methods
11 6,844,772 Threshold voltage extraction circuit
12 6,844,553 Absorption spectroscopy apparatus and method
13 6,844,247 Semiconductor device and method of manufacturing the same
14 6,844,185 Integrated biomolecule sensor, method and apparatus for fabricating the sensor, and method and apparatus for detecting biomolecules using the sensor
15 6,844,151 Methods for production of arrays with modified oligonucleotide and polynucleotide compositions
16 6,843,809 Vacuum/purge operation of loadlock chamber and method of transferring a wafer using said operation
17 6,843,616 Erosion control panels
18 6,843,546 Draft printing with multiple same-hue ink nozzles
19 6,843,347 Step stool
20 6,843,322 Monobore shoe
21 6,843,274 Electrically conductive confined space ventilator conduit formed of conductive polymer, electrical grounding circuit for ventilation system using same, and methods of using and forming same
22 6,843,200 Method and device in a paper machine, coating machine, intermediate winder, unwind stand of a slitter-winder, or in any other device for treatment of a web
23 6,843,193 Transonic hull and hydrofield (part III)
24 6,843,186 Narrow row spacing planter
25 6,843,086 Magic keychain
26 6,843,038 Method and apparatus for controlling zipper tension in packaging equipment
27 6,843,001 Scraper
28 6,842,569 Polarization independent broad wavelength band optical switches/modulators
29 6,842,529 Speaker
30 6,842,272 Hologram plate and its fabrication process
31 6,842,228 Fusion attachment of rigid pellicles and/or frames
32 6,842,223 Enhanced illuminator for use in photolithographic systems
33 6,842,174 Graphics data generating method, graphics generating apparatus and components thereof
34 6,842,170 Display with aligned optical shutter and backlight cells applicable for use with a touchscreen

- 35 [6,842,092](#) [Apparatus and method for reducing propagation delay in a conductor](#)
- 36 [6,842,080](#) [LC oscillator formed on a substrate](#)
- 37 [6,842,066](#) [Bias circuit and semiconductor device](#)
- 38 [6,842,061](#) [Timing generating apparatus and test apparatus](#)
- 39 [6,842,038](#) [Self optimizing off chip driver](#)
- 40 [6,842,028](#) [Apparatus for testing reliability of interconnection in integrated circuit](#)
- 41 [6,841,943](#) [Plasma processor with electrode simultaneously responsive to plural frequencies](#)
- 42 [6,841,919](#) [Piezoactuator and drive circuit therefor](#)
- 43 [6,841,868](#) [Memory modules including capacity for additional memory](#)
- 44 [6,841,854](#) [Semiconductor device](#)
- 45 [6,841,840](#) [Capacitive dynamic quantity sensor](#)
- 46 [6,841,754](#) [Composite electrode for a plasma arc torch](#)
- 47 [6,841,615](#) [Composite Adhesive](#)
- 48 [6,841,467](#) [Method for producing semiconductor device](#)
- 49 [6,841,380](#) [Apparatus for providing an environment of controlled water activity for storage of nematodes](#)
- 50 [6,841,307](#) [Photomask making method and alignment method](#)